

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge		l Auntob r	3. Moran	Sitting Judge if Other than Assigned Judge				
CASE NUMBER		02 C	3629	DATE	7/22/	2002		
CASE TITLE		Arthur Sheridan vs. Village of Bensenville etc.						
MO	MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]							
Memorandum Opinion and Order								
DOCKET ENTRY:								
(1)	☐ File	Filed motion of [use listing in "Motion" box above.]						
(2)	☐ Brid	Brief in support of motion due						
(3)	□ Ans	Answer brief to motion due Reply to answer brief due						
(4)	☐ Rul	Ruling/Hearing on set for at						
(5)	☐ Stat	Status hearing[held/continued to] [set for/re-set for] on set for at						
(6)	☐ Pret	Pretrial conference[held/continued to] [set for/re-set for] on set for at						
(7)	□ Tris	Trial[set for/re-set for] on at						
(8)	☐ [Bc	[Bench/Jury trial] [Hearing] held/continued to at						
(9)		This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] ☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).						
(10)	contending	[Other docket entry] Enter Memorandum Opinion and Order. Plaintiff now seeks to remand, ontending that defendants lost their right to remove when they failed to do so within 30 days of the ervice of the original complaint. The motion to remand is granted.						
(11)								
	Notices mailed by judge's staff.				number of notices JUL 2 3 2002	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		
>	Notified counsel by telephone. Docketing to mail notices. Mail AO 450 form. Copy to judge/magistrate judge. Courtroom deputy's initials		18000 TOIM	1	date docketed AU V docketing deputy initials	8		
				Fill 70	date mailed notice mailing deputy initials			

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

ARTHUR SHERIDAN,)	No.
Plaintiffs,)))	1111 53 5005
Vs.	No. 02 C 3629	7111 52
VILLAGE OF BENSENVILLE, a body politic and corporate; et al.,	,))	
Defendants.))	Marie 18

MEMORANDUM OPINION AND ORDER

In a case filed in state court in DuPage County on December 14, 2001, plaintiff alleged that the defendants, the Village of Bensenville and various public officials, destroyed a building on his property without just compensation "in violation of plaintiff's rights under the 1st, 4th, 5th and 14th Amendments to the Constitution of the United States and Sections 1, 2, 6, 12, 15 and 23 of Article I of the Constitution of the State of Illinois." He asked for a writ of mandamus directing the defendants to initiate an eminent domain proceeding. That complaint was dismissed upon defendants' motion, an amended complaint was apparently filed and withdrawn, and a "Second Amended Complaint for Writ of Mandamus" was filed May 13, 2002. That complaint was promptly removed. Plaintiff now seeks to remand, contending that defendants lost their right to remove when they failed to do so within 30 days of the service of the original complaint. The motion to remand is granted.

Defendants, opposing the motion to remand, contend that the references in the original complaint to federal constitutional rights are vague, and not until the second amended complaint did the plaintiff sufficiently (although not sufficiently enough) set forth a federal

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No. 02 C 3629

claim. We disagree. There is, perhaps, a symbiotic relationship between the issues relating to the removal and defendants' motion to dismiss. Defendants contend that there can be no federal constitutional claim because plaintiff has adequate state remedies, which he has *not* pursued. Plaintiff says he is trying to pursue them; that is what his lawsuit is all about. But, say defendants, mandamus to compel the village to initiate an eminent domain proceeding is not the proper way to go. Plaintiff must bring an inverse condemnation proceeding seeking damages. Plaintiff counters by contending that his petition for a writ *is* an inverse condemnation proceeding.

We decline to jump into that controversy. What we do know is that plaintiff, from the start, has claimed that governmental actors destroyed a commercial building on his land without payment of just compensation in violation of specific federal constitutional rights. Whether the violations of those rights triggers a right to an eminent domain proceeding, or whether plaintiff must amend to sue directly for damages or for a declaration, we leave to the state court.

13_, 2002.

Senior Judge, U. S. District Court